

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE
THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

Internet Address: <http://www.dps.state.ny.us>

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August 9, 2007

Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WC Docket No. 04-36, In the Matter of IP-Enabled Services

Dear Chairman Martin:

Verizon's August 8, 2007 letter to you asserting that "the Commission should . . . confirm . . . that the same rules apply to all VoIP providers"¹ misstates the law. There is no basis for taking such action.

Facilities-based VoIP carries intrastate calls² and the FCC thus has jurisdiction only when it is impossible to separate the interstate and intrastate components of the

¹ Verizon's August 6, 2007 letter p. 12.

² *In re Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minn. Pub. Utils. Comm'n*, Memorandum Opinion and Order, 19 FCC Rcd 22404, ¶32 n. 113 (rel. Nov. 12, 2004) (" . . . digital voice clearly enables intrastate communications . . . ") ("this [cable VoIP] network design also permits providers to offer a single, integrated service that includes both local and long distance calling . . . ") (quoting letter from J.G. Harrington, Counsel for Cox Communications, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 03-211, 04-36 at 1-2). "In addition, while we acknowledge that there are generally intrastate components to interconnected VoIP service and E911 service, . . . " *In the Matter of IP-Enabled Services*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, ¶ 29 n. 95 (rel. June 3, 2005). "Alternatively, to the extent that an interconnected VoIP provider develops the capability to track the jurisdictional confines of customer calls, it may calculate its universal service contributions based on its actual percentage of interstate calls. Under this alternative, however, we note that an interconnected VoIP provider with the capability to track the jurisdictional confines of customer calls would no longer qualify for

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FCC regulation and the State regulation would negate the FCC's lawful authority over interstate communication.³ Because it is possible to separate intrastate facilities-based VoIP calls from interstate calls, the FCC has no jurisdiction over such calls.

In addition to the flaws in its legal analysis, the Verizon letter also raises issues of fact (such as the cost of separating services that are ancillary to telephone service) as well as critically important policy questions about the role of state efforts in overseeing the development of the telecommunications market and maintaining core consumer protections for a vital service.

Accordingly, the FCC should not act on Verizon's letter without allowing the parties to comment on the issues it raises.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter McGowan".

Peter McGowan
Acting General Counsel

the preemptive effects of our Vonage Order and would be subject to state regulation. This is because the central rationale justifying preemption set forth in the Vonage Order would no longer be applicable to such an interconnected VoIP provider." *In the Matter of Universal Service Contribution Methodology*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, ¶ 56 (rel. June 27, 2006).

³ *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 375 n. 4 (1986); *Iowa Utils. Bd. v. Federal Communications Comm'n*, 120 F.3d 753, 796 (8th Cir. 1997)(*rev'd sub nom. on other grounds, AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999)).